

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

BARRY LINTON,	:	
	:	
Plaintiff	:	
	:	
v.	:	C.A. No. 04-11362-RWZ
	:	
NEW YORK LIFE INSURANCE AND ANNUITY	:	
CORPORATION,	:	
	:	
Defendant.	:	

DEFENDANT’S MOTION FOR SUMMARY JUDGMENT

Pursuant to Fed. R. Civ. P. 56, Defendant New York Life Insurance and Annuity Corporation (“New York Life”) respectfully moves that the Court grant summary judgment in favor of Defendant on all of the remaining counts asserted by plaintiff Barry Linton in the Complaint: Count I (Breach of Contract); Count II (Misrepresentation); Count V (Breach of the Covenant of Good Faith and Fair Dealing); and Count VI (Unjust Enrichment and Restitution). The grounds for this motion are set forth in the Memorandum of Law in Support of Defendant’s Motion for Summary Judgment.

In support of its motion, New York Life submits herewith: (i) Defendant’s Memorandum in Support of Its Motion for Summary Judgment; (ii) Defendant’s Concise Statement of Undisputed Material Facts Pursuant to Local Rule 56.1 (“Statement of Facts”); (iii) Declaration of John Hess, Jr. in Support of New York Life’s Motion for Summary Judgment; and (iv) Declaration of Levina Wong Transmitting Documents Cited in Statement of Facts.

CONCLUSION

For the reasons set forth in New York Life's Memorandum of Law in Support of Defendant's Motion for Summary Judgment, New York Life respectfully requests that the Court enter summary judgment in its favor and dismiss the remaining counts of Plaintiff's Complaint in their entirety.

REQUEST FOR ORAL ARGUMENT

Believing that oral argument may assist the Court in resolving the issues presented in this motion, New York Life respectfully requests that oral argument be heard.

Respectfully submitted,

NEW YORK LIFE INSURANCE AND
ANNUITY CORPORATION

By its attorneys,

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Dated: February 13, 2006

Certificate of Compliance with LR 7.1

I hereby certify that counsel for Defendant New York Life conferred with counsel for Plaintiff Barry Linton in a good faith effort to resolve or narrow the issues set forth herein.

/s/ Levina Wong
Levina Wong

CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2006, Defendant's Motion for Summary Judgment was filed through the ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on February 13, 2006.

/s/ Levina Wong
Levina Wong